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RELATIVE TO THE  
FOREST RESERVATION  
WHICH IS CALLED  
THE YOSEMITE NATIONAL  
PARK, STATE OF  
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THE LIBRARY  
OF  
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LOS ANGELES

**Relative to**  
**The Forest Reservation**  
**which is called**  
**The Yosemite National Park**  
**State of California**

1890 CALIFORNIA  
THE YOSEMITE NATIONAL PARK

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Relative to

## The Forest Reservation

Which is Called

## The Yosemite National Park

**The United States Reservation, Known as "Yosemite National Park", Is Not a National Park at all, but Merely a Forest Reservation Made by Act of Congress and Committed to the Care of the Secretary of the Interior, With Instructions to Preserve From Despoliation the Curiosities and Natural Wonders Within It.**

Emphatically and clearly, the Act of Congress setting aside this reservation did not dedicate it as, or make it a national park, but with all necessary precision that Act established it as a forest reservation. Further than this, a later Act, changing its boundaries, expressly preserved that status as a forest reservation, in express terms left it subject to the provisions of the original Act as a forest reservation, and said nothing which by any reading of the English language can be construed as giving this reservation the legal status of a national park.

The reservation thus established has been called The Yosemite National Park, but this designation of it by a park name does not, can not, give it other status before the law than that clearly affixed by the Acts of Congress making and remaking it a forest reservation. There is

no Act of Congress which establishes it as a park. There are two such Acts which establish it as a forest reservation.

The case seems to be so plain both as to the letter of these laws and as to the spirit which Congress enacted into them, that there should be no moment of hesitation in according to this area its legal status as a forest reservation, or in making it subject to the provisions of those Acts of Congress undeniably applicable to all "public lands and reservations of the United States", including forest reservations.

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**National Parks and National Forest Reservations Are  
Made for Essentially Different Prime Purposes,  
and the Making of Them Is Not to Be Mistaken  
in Either Case.**

In law a national park is an area "set apart and dedicated forever as a pleasuring ground for the use and enjoyment of the people of the United States"; while a forest reservation is an area supposedly covered with trees or brushy growths, which has been merely withdrawn from the body of the public lands, and is held for "the preservation and propagation of its forests and to "promote good conditions of water flow". These two purposes are, practically, quite different, and though forest growths should be and are jealously preserved in national parks, and though forest reservations should be and are open to pleasurable use and enjoyment by

the people, to effect the main purpose in each case, the legal status of the two kinds of reservations is made different.

In the one case, we have a dedication forever, to the people, as a pleasure ground, the idea of commercial or economic use or development, presumably, being ignored. Dedication as a park, seems to preclude possibility of subsequent change of purpose without formal consent by the people. The dedication is to their use and enjoyment forever. The area seems thereby to be removed from possibility of other disposal by the government without the people's expressed mandate.

In the other case, we have simply a withdrawal of the area from the balance of the public lands, and its reservation from settlement, in order that its forests may be maintained because of their direct value as sources of timber supply and their incidental value as conservators of water supply. Here we have the commercial idea dominant.

Whatever may be the policy of Government as to the management of forest areas, whether, as their owner, it will hold all their advantages for its own direct account, or whether the opportunities for commercial development which this control affords are to be opened to exploitation by private or incorporated enterprise, the economic end to be subserved by making an area into a forest reservation rather than a national park, remains the same.

Moreover, the area put into a forest reservation still remains subject to the unhampered control of Congress. Unlike a dedicated park, a forest reserve or any part of it may, by Act of Congress, lawfully be returned to the body of the public domain and the lands may be again opened to settlement. The boundaries of forest reservations have thus frequently been changed, some parts being left out, other areas being taken in.

The trees of forest reservations are to be preserved, primarily, in order that they may in due season be converted into commercial timber. The trees of national parks are to be preserved, primarily, in order that the people may for all time have and enjoy specimens and groves of those noble growths which it has taken long ages to produce. The waters of forest reservations are to be conserved and made to flow, primarily, in order that they may be used and made of economic benefit. The waters of national parks are to be conserved and allowed to flow, primarily, in order that the people may enjoy nature in its grandest and most varied aspects.

: Now, while the controlling purposes of the two classes of reservations are distinct and right, it is not necessary that we conclude that the waters and forests of national parks are to be held so sacred to public enjoyment, only, that no commercial use whatever may be made of them, any more than we would be justified in assuming that forest reservations may not be pleasurable used and enjoyed by the people, because the prime end in making them is an economic one. But it is necessary that we

realize that the kind of control of a national park area, keeping in mind its prime purpose, must be different from the kind of management suited to a forest reservation, in view of its prime purpose.

In the case of the national park, the Government would be acting in its sovereign capacity as the representative of the people. In the case of the forest reservation, the Government would be acting merely as the owner of lands composing it, and could, through its administration, undertake to do nothing whatever, other than land owners in general might do.

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### **The Economic Considerations in the Case Herein Referred to Were Paramount, and Forest Reser- vations Were Made, Not Parks.**

Congress has made laws undeniably intended for the encouragement of economic development upon the public lands and reservations. These laws have been made applicable to "all reservations of the United States", and this expression clearly includes forest reservations, but may not, in the view of some authorities, include national parks. It becomes important, therefore, for economic reasons as well as others, to know whether Congress has dedicated nearly fourteen hundred square miles of territory, an area larger than the State of Rhode Island, situated in the heart of the State of California, as a national park, thereby, possibly, making necessary its control without regard to the rights of the

owners of lands which have been embraced within its borders, and without regard to the commercial interests of the people of the State in the development of the resources thus held, or whether it has simply placed these areas in forest reservations to be managed, by its Secretary of the Interior, under special instructions, for the Government as a great land owner.

It is not disputed, of course, that Congress has the power to make national parks at will, where the lands embraced are of the public domain; but the representatives of the people and of the States are supposed to take the rights of individuals, the necessities of industry, and the interests of local publics, under State laws, into consideration, as well as the advisability of providing national play grounds, in the creation of forest reservations or the dedication of national parks, even as in any other branch of legislation.

As we shall presently see, there were already three great public mountain parks in existence in this part of the Sierra Nevada region. With this fact before it, did Congress see a necessity for making three additional, and, in the aggregate, much larger ones, when it is said to have made the so-called Yosemite National Park, or did it see the advisability of making three forest reservations? That is the question. The clearly apparent facts and the Acts of Congress themselves forcibly show that Congress must have seen there was no excuse for making additional national parks in this region, but

there was a reason for reserving the forest lands and providing for care of the remarkable natural features embraced within the adjacent high mountain area.

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### **The Yosemite Valley Grant Status Affords a Key to the Situation, While at the Same Time it Accounts for Much Popular Misunderstanding of it.**

Before reviewing the facts of the so-called Yosemite National Park case, it is well that we understand the status of the Yosemite Valley Grant:

By Act of Congress approved June 30th, 1864, the United States granted "to the State of California the 'cleft' or 'gorge' in the Granite peak of the Sierra Nevada mountains, \* \* \* known as Yo-Semite Valley, with its branches and spurs", etc. Subsequent survey delineation of the boundaries of this grant established it as embracing about fifty square miles of territory whose limits were marked by an irregular line following around the famous valley and, in general, about one mile back from the upper edge of the cliffs which at once border and make it, thus including an area about thirteen miles in length and four and one-half miles maximum width. This area has always been known as the "Yosemite Valley Grant".

The terms of the grant were such that the State had to accept it upon the express conditions that the "granted premises shall be held for public use, resort and recre-

"ation and shall be inalienable for all time". In other words, the Yosemite Valley was given to the State as a public recreation ground or mountain park, and as such it was held and administered by the State until March, 1905, when it was by Act of the State Legislature reconveyed to the United States upon practically the same conditions, namely, that it "be held for all time " by the United States of America for public use, resort "and recreation". By joint resolution, Congress accepted it on these terms, in June, 1906.

This area is a park, because it was from its first establishment expressly dedicated for all time to uses such as parks are designed for. It was not set aside as a forest reserve or for the purposes sought under the law to be subserved by the establishing of national forests. Now that it again belongs to the United States, it is to all intents and purposes a national park, although there is no law expressly making it such, and most fittingly it might be named the "Yosemite National Park". But this is *not* the Yosemite National Park, so-called, of which this argument is written.

The above Yosemite Valley Grant to the State of California, embracing all of the Yosemite Valley, was not and was not known as the Yosemite National Park during the period of its ownership by the State, from 1864 to 1905. It is not now, even though it has been reconveyed to the United States, and notwithstanding the joint resolution of acceptance, properly a part of the forest reservation named the Yosemite National Park. The

General Government could accept the "grant" back only as a park, with the condition that it be maintained as such for all time; and, it could not, in good faith, incorporate it with or give it the status of the forest reservation which surrounds it and which is *merely called a park.*

We thus see that the Government possesses that which should be the officially named Yosemite National Park, embracing as it does the Yosemite Valley, but which necessarily is a separate possession from that *called* the Yosemite National Park.

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**The Act of Congress of October 1, 1890, Unquestionably Established Three Forest Reservations, of Which One Has Been Called the Yosemite National Park.**

The lawfully named Yosemite National Park, which is not, according to the law, a national park, is another possession of the Government, of which the Yosemite Valley does not form a part.

The forest reservation called the Yosemite National Park and which has been administered under this name by the United States Department of the Interior, was created by Act of Congress approved October 1st, 1890, and re-established within modified boundary lines, by a similar Act approved February 7th, 1905.

Originally, this area was rectangular, measuring about 38 miles from east to west and 33 miles from north to south, and embracing over 1200 square miles of territory. By the Act of 1905 its rectangular form was abandoned, its exterior lines were made to follow certain natural watershed ridges of the mountains, except along its western border, and its area was reduced to about 1050 square miles. It originally surrounded and still does wholly enclose the Yosemite Valley Grant tract. Thus, we have about 1000 square miles of forest reservation called a park, embracing about 50 square miles of the Yosemite Valley Grant tract which, as said, properly has a park status in law and should, in good faith with the State of California, be regularly established as a national park.

The forest reservation Act of October 1st, 1890, said that the certain lands embraced within the described boundary "are hereby reserved and withdrawn from settlement, occupancy or sale under the laws of the United States, and set apart as reserved forest lands"; and the amendatory Act of February 7th, 1905, repeated that the lands contained within the changed boundaries are hereby "reserved and withdrawn from settlement, "occupancy or sale under the laws of the United States, "and set apart as reserved forest lands, subject to all "the provisions" of the former Act, naming it.

The first Act was named "An Act to set apart certain "tracts of land in the State of California as forest reservations". The second Act recognized the use of the

name, "Yosemite National Park", which meanwhile had been attached to that reservation, by directing that moneys derived from sale of certain rights of way in the area excluded by it from the reservation shall be "expended " under direction of the Secretary of the Interior in the "management, improvement, and protection of the "forest lands herein set aside and *reserved*, which shall "hereafter *be known* as the Yosemite National Park". This is all that is said towards making the place a park.

This way in which the park name is used effectually precludes any inference of an intention on the part of Congress to establish a park or to convert into a park by the Act of 1905 the forest reservation theretofore withdrawn and set aside and thereby re-established. To say that an area expressly made into a forest reserve "shall be known" as the Yosemite National Park no more makes it an area having the legal status of a national park than would an unsupported Congressional declaration that it "shall be known as the American Na- "tional Indian Reservation" make it an area subject to control and use as an Indian reservation.

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**The Act of Congress of February 7, 1905, Confirmed  
the Forest Reservation Status Set Up by the First  
Act, Authorized the Name of Yosemite National  
Park; but Did No More.**

If in addition to the mere naming of the reservation, any meaning is to be drawn from the words, "the forest "lands herein set aside and reserved, which shall here-

" after be known as the 'Yosemite National Park' ", logically and grammatically that meaning must constitute a confirmation of the forest reserve status of the tract. We cannot, either in logic or in grammar, make that clause mean—"the forest lands herein set apart and " reserved shall hereafter be the Yosemite National " Park", but we can easily, according to rule, read it as equivalent to—"although the area herein set apart and " reserved is to be held merely as a forest reservation, " the name Yosemite National Park shall apply to it".

Furthermore, the very fact that Congress undertook to exclude, by the Act of 1905, a considerable area of the reservation made by that of 1890, shows that Congress did not look upon the lands constituting the reservation as having been dedicated for national park purposes; and it is clear that the Act of 1905, itself makes no dedication to public use, as a park, and no change from the status established by the original Act of 1890, but is specific in preserving the forest reservation status set up by the Act of 1890.

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### **National Parks Are Unmistakable as Congress Has Made Them, and There Is No Excuse for Mistaking National Forest Reservations as Congress Has Made Them.**

Going a step further, Congress has been quite clear in its legislation creating national parks. The first Act of the kind was that establishing the Yellowstone National

Park, approved March 1st, 1872. This was entitled "An "Act to set apart a certain tract of land lying near the "headwaters of the Yellowstone River as a Public "Park", and the lands withdrawn and reserved by it, were expressly "dedicated and set apart as a public park "or pleasure ground for the benefit and enjoyment of "the people".

Then we find the Act creating the Crater Lake National Park, approved May 22, 1902, and entitled "An "Act reserving from the public lands in the State of "Oregon, as a public park for the benefit of the people "of the United States", etc. The lands dealt with by this Act were by it "dedicated and set apart forever as "a public park or pleasure ground for the benefit of "the people of the United States, to be known as Crater "Lake Park" (32 U. S. Stats. L. 202).

The Wind Cave National Park area was established by Act of Congress under a park name (32 U. S. Stats. L. 765) and the lands were by it declared to be "set apart "as a public park".

Other similar examples might be cited. There is no misunderstanding legislation such as this. When Congress has undertaken, by title of an Act, to make a national park its Act is invariably plain and to the point, containing no words whereby it might be thought to set up a forest reservation. The United States statutes do not afford an instance where lands have been withdrawn as "forest lands", or spoken of as "reserved forest lands" or as a "forest reservation" in an Act declaredly

creating a national park. These two lines of legislation—that establishing national parks and that setting aside forest reservations—are quite distinct, and each is so characteristic in its wording that there seems to be no excuse for confounding it with the other.

When Congress has said, as in the Act of October 1st, 1890, that certain lands are “hereby reserved and withdrawn from settlement, occupancy or sale under the laws of the United States, and set apart as reserved forest lands”, it would seem that we have no more right to conclude that Congress has thereby established a national park, than we have to conclude that Congress intended merely to set aside a forest reservation, when, as in the Yellowstone Park Act, it has said that the lands withdrawn were thereby “set apart as a public park or pleasuring ground for the benefit and enjoyment of the people”.

If, in an Act entitled “An Act to set aside certain tracts of land in the State of California as forest reservations”, lands “set apart as reserved forest lands” and referred to repeatedly in that Act as “said reservation” and in no other way, are not to be regarded as constituting a forest reservation, but are to be considered as being a national park, then, what language could possibly be used by Congress to make a forest reservation, that might not be said to establish a park?

**The Act Creating the Sequoia National Park, Approved September 26, 1890, Proves that the Act of October 1st, Six Days Later, Was Intended to Make Forest Reservations, Not Parks.**

But beyond all this, in the case of the forest reservation known as the Yosemite National Park and others established by the same Act, there is the strongest corroborative evidence that Congress expressly did not intend to make them national parks.

The forest reservation Act of October 1st, 1890, described three separate areas which were by it reserved and withdrawn from the body of the public lands and "set apart as reserved forest lands", and each of these was referred to in the Act as "said reservation". One of these has since been known as the "Yosemite National Park", another as "General Grant National Park" and the third has been in name included with an area which is a national park named "Sequoia National Park".

These names were arbitrarily and without Congressional action given to the reservations by the Interior Department in preparing and publishing its land office maps, and in preparing schedules of items to be included in the sundry Civil Appropriation bills.

Thus, the park names for the forest reservations first appeared on the General Land Office maps, merely as convenient designations for the reserved areas, and in the Sundry Civil Appropriation bills, to identify items of money appropriated to defray the expense of guarding and otherwise caring for these areas which had by

the reservation Act been specially put in charge of the Secretary of the Interior. There was no authority in law for this naming of these reservations as parks.

On September 25th, 1890, only six days before the forest reservation Act was approved by the President, he approved "An Act to set apart a certain tract of land " in the State of California as a public park". This tract embraced seventy-six square miles of territory in Tulare County, California, upon which were found a large part of the Tule River Grove of mammoth trees. The declared object of this Act was to preserve these wonders, and the area was by it "dedicated and set " apart as a public park or pleasure ground for the benefit and enjoyment of the people".

This park reservation immediately adjoined, on the south, one of the, much larger, forest reservations established by the Act approved only six days later. These two Acts must have been considered in the same Committee of Congress about the same time, and been put on their passage about the same time, as they were approved very nearly together. The forest reservation one expressly referred to the park one, in excluding from one of the reservations made by it, four sections of land, as it says, "included in a previous bill"; thus showing that the park Act was under consideration with the reservation Act. The one was named an Act to make a public park, the other was named an Act to establish forest reservations.

Here we find Congress, practically at one and the same time, unmistakably making a park of one area, and, declaredly, making forest reservations of other areas, one of which was immediately adjacent to the park area. If it were the intention to make this reserved forest area adjoining the park area, a park, manifestly, it would have been included with that adjacent area which was, in unmistakable terms, made such. As it was not so included, as the two measures became law side by side, we must conclude from this circumstance, alone, that it was the deliberate and set purpose of Congress to make by the one Act, reservations wholly different from that made by the other; namely, to make them, as it says, forest reservations, not parks. Thus, the so-called Yosemite National Park and the General Grant National Park, as well as all of that called Sequoia National Park, except the seventy-six square miles separately made a park by the Act of September 26th, 1890, are by reasoning based on this contemporaneous park Act, shown to be forest reservations, and nothing more.

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**The Evident Intention of Congress to Make Forest Reservations, Not Parks, by the Act of October 1st, 1890, Is Proven by the Changes Made in the Instructions as to Their Care, Which Were Adopted from the Park Acts.**

It may well be asked, how it has come about that in the face of such plain wording of Acts of Congress creating forest reservations the areas so set aside have been

ranked and administered as national parks. The answer is not far to seek.

The first national park act, that of the Yellowstone Park, contained a section as follows:

"SEC. 2.—That said park shall be under the exclusive control of the Secretary of the Interior, whose duty it shall be, as soon as practicable, to make and publish such rules and regulations as he may deem necessary or proper for the care and management of the same. Such regulations shall provide for the preservation from injury of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition. The Secretary may, in his discretion, grant leases for building purposes, for terms not exceeding ten years, of small parcels of the ground, not exceeding five acres; at such places in said park as shall require the erection of buildings, for the accommodation of visitors;"

This has been considered a special instruction adapted to setting up a fitting administration of a national park, and has been transcribed into later park Acts; so that when apparently the same section (but with crucial changes presently to be noted) was found in the forest reserve Act of Oct. 1st, 1890, the conclusion seems to have been jumped at that Congress had intended to give the reservations set aside by it the status of national parks. Several very important points evidently were overlooked by the officials of the Interior Department, however, when they adopted this view.

In the first place, although the section evidently was copied out of the Yellowstone Park Act of 1872, or the

Sequoia Park Act of 1890, then before Congress, into the forest reserve Act of 1890, the words "said park" used three times in that section in the park Act were carefully changed to "said reservation", in transcribing it into the reservation Act, thereby expressly showing that it was not the intention, by using this section, to make the area a park, but that it was the intention to give it the status of a reservation, merely.

In the next place it was apparently overlooked, that this very large forest reservation, surrounding the Yosemite Valley Grant, embracing more than a thousand square miles of high mountain and deep cañon country, probably included "natural curiosities or wonders" other than the Yosemite Valley itself, which it would be in the national interest to preserve "in their natural condition", and that this special instruction was manifestly as applicable to so preserve them in a national forest reservation as in a national park.

The Yosemite Valley, as we have seen, was already granted to and owned by the State of California, as a park; but there were the Hetch-Hetchy valley (second, only, as a wonder, to the Yosemite, itself) and a group of mammoth trees known as the Merced Grove, which might be classed as wonders or curiosities. But these two wonders or curiosities, with all others identifiable, covered in the aggregate not to exceed fifty square miles of area, whereas the reservation embracing them, as well as embracing the Yosemite Valley Grant, covered over a thousand square miles of area. Within this great reservation there were no other features to be ranked as

wonders or curiosities, any more than almost any part of the high mountain area of the great Sierra Nevada Range, set apart or included in other forest reservations, was of character necessitating this classification and special preservation.

Such being the facts, we would be amply justified in assuming that Congress had intended, in making this very large forest reservation, by transcribing into the Act the section relative to special management and care, to provide for preserving the scattered wonders or curiosities and notable forest growths found at points within it, without segregating these out and establishing a park to hold each of them, and, at the same time, without dedicating this enormous reservation as a public park.

While it seems reasonable, as well as logical, to take this view of the intention of Congress, on the other hand, it must seem unreasonable, even to the point of absurdity, to assume that Congress intended by merely providing for a special guarding of the several wonders and curiosities found on limited areas within this forest reservation, to give the whole area, of which about nineteen-twentieths was commonplace as high mountain region, the legal status of a national park. Would it not be absurd to assume that Congress intended to do by an obscure implication that which it expressly did not do otherwise in the same Act?

From the standpoint of common sense, to the man who knows this region and reads these Acts, it seems entirely clear that in the case of the so-called Yosemite National Park, General Grant National Park, and Sequoia Na-

tional Park (except the seventy-six square miles herein-before adverted to), Congress specially and definitely intended, as the Act said both in its title and in its body, to make them mere forest reservations, but at the same time, to provide for the care of such natural curiosities and wonders as they might embrace, thereby doing away with the necessity for creating separate parks for this special purpose.

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**The Broad View and Business Prudence of Congress  
Is Shown by the Creation of a Park in One Act  
and the Establishment of Forest Reservations in  
the Other, Practically, at the Same Time.**

Furthermore, we can readily discern reasons of an economic nature with respect to Government interests, and of an equitable and politic nature with respect to the interests of the people of the State of California, why these areas were made forest reservations and not parks.

The tracts set aside as forest reservations by the Act of October 1st, 1890, embraced nearly 1400 square miles of territory, an enormous area, almost in the very heart of the State of California. Three choice public parks had already been provided for within this space, namely, that of the Yosemite Valley Grant, fifty square miles, that of the Mariposa Big Tree Grant, four square miles, and the seventy-six square miles embracing the mammoth trees in Tulare County, specially made a park by the Act of September 26th, 1890. There was no necessity for making any more parks in this part of California, there

was no reason or excuse for putting the enormous area of 1350 to 1400 square miles, which should be cared for by reason of its forests and waters, into parks wherein neither forests nor waters would, presumably, be available for any useful purpose. And there could be no excuse for making into national parks this immense territory, a very large portion of the best lands of which were already in private ownership, for this would be, practically to deprive the land-owners of a very material part of the beneficial use of their properties. In so placing such private lands within a park, it would seem that Congress would have felt called upon to at once provide for buying out the owners at the full value of their holdings. And this, Congress evidently did not intend to do. These considerations must have been before Congress as a body of intelligent men, when it passed the Act of October 1st, 1890, establishing the three large forest reservations, expressly not dedicating them as parks but providing for the care of such wonders and curiosities as might be found within them.

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**Congress Has Not Since Legislated by Implication,  
to Abolish These Forest Reservations and Establish  
Them as Parks. Assumption That It Has  
Done So Would Be Absurd.**

How then, it may be asked again, has it come about that these reservations have been given the park status in the Departments at Washington? There is absolutely nothing in either Congressional Act connected with them

which has made them parks, or which justifies the assumption that Congress intended to give them park standing. We must look beyond these laws themselves for the excuse for this course, if such excuse can be found. The only glint or shadow of one which appears in sight is that Congress has from time to time in succeeding appropriation acts, included items of moneys, "for the care of the Yosemite National Park", "for the care of the Sequoia National Park", etc., and has in another Act provided for the detailing of troops to guard the areas, under the names of national parks, and has in still another Act provided for a right of way for a public road through one of them under the name of a national park.

Is it thought to be possible for Congress to amend or alter a definite law by any such course of enactment as this? If so, just when did this course become effective, just when did it change the status of these areas from that of forest reservations which the Act of October 1st, 1890, made them, to that of parks?

We have already seen how it first came about that the areas were called national parks, that is, by simply naming them such on the Department of Interior maps, and by calling them such in the schedules of expense items for appropriation submitted to Congress by the Secretary of the Interior, and by enactment of such items, by these names, into the laws.

Just when, to repeat, did this sort of thing make any one of these forest reservations a national park? It can

hardly be assumed that one such provision of money to take care of a forest reservation under an unauthorized park name would make it a national park. There is no precedent for this sort of thing. Congress has not undertaken in other instances to legislate in any such way. And, if the first such enactment, merely referring to a forest reservation by a park name, did not abolish it as a forest reservation and make it a national park, how can it be said that the second such enactment, or the third, or the fourth, or the entire number taken together had any such effect?

To assume that any one of these mere convenient uses of a park name to designate an area specifically made by Act of Congress into a forest reservation, effected its extinction as such reservation and its establishment as a national park, or to assume that all of these convenient uses together have had any such legal tendency or effect, is to assume the imbecility of Congress, to say nothing of its disregard for precedent and the constitutional rights of the people.

If, as seems perfectly clear from the statute itself, Congress did not by the Act of October 1st, 1890, put these large areas of the State of California into national parks, and did not thereby undertake to bottle up and render comparatively valueless great areas of land in many private ownerships, and did not see fit to practically withdraw from useful application the valuable timber areas and water resources embraced by them, then did it, by the mere subsequent convenient use of national park names for these areas, in later Acts, be-

tween 1890 and 1905, undertaken to do, by indirection, that which it failed to do directly in the original Act?

This, if so, would afford a curious spectacle on the horizon of national legislation. But we would scarcely be given opportunity to contemplate it before we would find Congress, again, in the Act of February 7th, 1905, positively setting aside the effect of its indirect, inferential legislation, enacted meanwhile, by expressly re-creating the Yosemite, so-called, National Park as a forest reservation in the exact terms that it originally made it a forest reservation, and specifically setting it back to its status as a forest reservation under the original Act.

And then, we would immediately observe that the absurdity of the situation was being added to in that same Act of re-creation, by again starting the game, at the very close of the Act, of abolishing it as a forest reservation by calling it a park.

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**The Gradual Propagation of Error From Small Beginnings, Possibly, May Be Responsible for the Colossal Wrong and Consequent Embarrassments of This Case.**

Upon what rule of construction it can be assumed that the forest reservation established by the Act of October 1st, 1890, and re-established with altered boundaries by the Act of February 7th, 1905, can be given the legal status of a national park seems to be beyond the limit of either common sense or legal understanding.

Error, once dominant, "precedent", is accountable, in the interpretation of law, for much wrong. The mind once burdened with a false conception, inherited, may insensibly shut out the truth even in a just man. This seems to have been the case with some of those who have had to do with the administration of the so-called Yosemite National Park. Possibly for some reason, which it would be useless to inquire into at this late day, the three forest reservation areas made by the Act of October 1st, 1890, were, without special intent given park names, by the predecessors of those now in the Interior Department, and others later through force of circumstances, felt called upon to maintain a park status for these reservations. Thus, one step may have led to another, and one assertion of the three forest reservations being national parks may have led to another, until the national public has come to regard them as parks, so that now the situation may be awkward.

But the law creating these reservations is yet just what it was when it was passed. The law re-creating that which goes by the Yosemite name is yet just what it was when it was passed. They both, for this so-called Yosemite National Park, set up the forest reservation status and none other, and there is no law which has changed it; and there is nothing in either of these laws which justifies the management of these areas otherwise than as forest reservations, except in so far as may be necessary for the preservation in their natural condition of such features as the Hetch-Hetchy Valley and the Merced Grove of Mammoth trees, and features of this class

cover, in the aggregate, most certainly, not as much as one-tenth part of the whole, not as much as the area of the patented lands which were forced under park rule by including them within the forest reservation boundaries, and then calling the reservations parks.

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### **A Special Forest Reservation Status for These Areas Will Not Relieve the Situation, if It Is to Be Merely a Park Status Under Another Name.**

It may be contended that though they be not "parks" yet these are not ordinary forest reservations. But, even in this view the case would not be altered on the points of administration and application of laws to them. The only extraordinary attributes which can be discovered as to them are that they were directly set aside by Act of Congress and not through proclamation by the President under the Forest Reservation Act, and that there is in the law a mandate to preserve the wonders and curiosities in them, and that they are so committed, by the law, to the charge of the Secretary of the Interior that the Department of Agriculture cannot claim jurisdiction over them under the Act which places forest reservations created by Presidential proclamation in its care.

Admitting these differences, yet it could not be maintained that a "special forest reservation" classification has justified application of national park status to them. Where, in the Acts of Congress, do we find provision for the administration of "special forest reservations", if

any such there be, except in the very Acts we are considering; and where, in these Acts, is there justification for holding their "special forest reservations" as parks, or treating them in law any differently from any other forest reservations, except as may be necessary to preserve their several scattered curiosities and wonders?

Where is there any justification in law for denying the application to "special forest reservations", of laws of Congress made applicable to "all reservations of the United States"? No such justification can be found. So, it were useless to set up a "special forest reservation" classification, as reason for treating these reservations as though they were national parks.

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### **There Is But One Right and Safe Course in Such Matters; Be Governed by the Laws, as They Are.**

If the forest reservation areas known as the Yosemite National Park, and the General Grant National Park, and the Sequoia National Park, ought to be national parks, and be subjected to all the restrictions, as to occupancy and use of them, and interference with and limitation of use of private lands within their boundaries, and the hampering of public enterprise dependent upon their resources, which the national park status is held to make necessary, then Congress should take the responsibility of acting on this advisability, and of making the law clearly in accordance with it.

If the law is not already such, then it is wrong to set up or maintain a false status for them, or to do aught in this connection to abridge private rights which our constitution is intended to protect, or to set aside the action of State laws, the foundation of right for which Congress has itself recognized or established, or to hamper or prevent the realization of industries, the laws providing for and encouraging which Congress has itself enacted.

That error has been perpetrated in the past, can be no excuse for its perpetuation. Rather should the fact of past imposition, through error, constitute an overwhelming reason for prompt rectification of wrong and establishment of the right. The imposition of error has been upon the National Public just as much as upon the individuals who have been the direct sufferers by it.

A supposedly popular policy, the interests of some dwellers outside of these areas, the political machinations of some interests to cripple other interests by working on popular prejudice, and, so, influencing those in authority to hold these forest reservations as parks, of course, can have nothing to do with this question.

It should be set at rest upon the basis of the plain letter and spirit of the laws, in the light of the very evident purpose of Congress in enacting them. Such is the only course in the administration of law which can maintain our free institutions.

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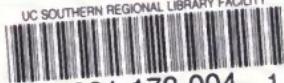
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